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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,160	08/15/2005	John D. Corbitt JR.	SPE-15375.001	3033
77096 7590 07/21/2008 WAYNE D PORTER, JR. LAW OFFICES OF WAYNE D. PORTER, JR. 1370 ONTARIO STREET, SUITE 600 CLEVELAND, OH 44113				
EXAMINER BROWN, MICHAEL A				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
07/21/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/518,160

Applicant(s)

CORBITT, JOHN D.

Examiner

MICHAEL BROWN

Art Unit

3772

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 and 22-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19, 20 and 22-28 is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-14 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver in view of Annett.

Oliver discloses in figures 1-14 a surgical drape system comprising a flexible drape 20, of folded sterilizable material (polymeric film), the drape is folded in accordion folds (fig. 4), the drape has a leading edge, a handle (any portion of the drape extending from the leading edge that can be grasped to pull the drape is a handle), a top drape 30, having adhesive (col. 2, lines 37-39) and an adhesive (claim 4) for attaching the drape to an operating table. However, Oliver doesn't disclose a bag in which the folded drape is disposed therein. Annett teaches in figures 1-7a surgical drape system comprising a bag 50 and a foldable drape 20, disposed therein. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the bag as taught by Annett could be used to store the drape disclosed by Oliver in order to keep the drape sterile before it is used in a surgical procedure. Note: The drape and the bag as taught by Annett are fabricated of a film, which would allow the bag and the drape to be draped over a table.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver in view of Annett, along with Healy.

Oliver discloses in figures 1-14 a surgical drape system, substantially as claimed. However, Oliver doesn't disclose a bag having perforations to store and remove the drape. Annett teaches in figures 1-7 a surgical drape system comprising a bag 50. However, neither of these references discloses perforations in the bag. Healy teaches in figure 1 a bag having perforations that allow the bag to be open. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that perforations as taught by Healy could be incorporated into the bag as taught by Annett in order to use the perforations to remove the drape to place it under the patient.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Esposito.

Esposito teaches in figure 7 a sterile storage container comprising an adhesive 58, on its bottom. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the adhesive being on the bottom on a container as taught by Esposito could be incorporated into the bag as taught by Annett and Healy in order to be able to use the adhesive to secure the bag to the operating table.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Madden.

Madden teaches in figures 1-4 a folded surgical drape comprising at least one legging 26. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the leggings as taught by Madden could be incorporated into the surgical drape system disclosed by Oliver and taught by Arnett to use the legging to cover a patient's leg.

Allowable Subject Matter

Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 19-20 and 22-27 are allowed.

Response to Arguments

Applicant's arguments filed April 28, 2008 have been fully considered but they are not persuasive. Applicant argues that the container disclosed by Arnett is generally cylindrical and clearly wouldn't be capable of extending beyond the sides edges of an operating table. However, the operating table isn't an element in the invention. Also, because tables coming in so many sizes, Arnett is capable of extending beyond a smaller operating table. Applicant argues that the container disclosed by Arnett isn't a bag. However, it can be interpreted as a bag because it is made of a film and used to contain drapes therein. Again bags come in so many sizes and shapes. Applicant

argues that there is no motivation to combine Oliver with Arnett. However, Oliver was used to set forth the environment of a surgical drape. Arnett was used as a modifier to store the surgical drape before it is used. The motivation for making this combination is the bag would protect the surgical drape before it is used to prevent the drape from become contaminated.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL BROWN** whose telephone number is (571)272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Brown/
Primary Examiner, Art Unit 3772